

1 IN THE UNITED STATES DISTRICT COURT
2 FOR
3 THE MIDDLE DISTRICT OF ALABAMA
4

5 THE UNITED STATES
6 OF AMERICA

7 vs.

CRIMINAL ACTION NO.
03-CR-220-E

8 DAVID JEROME CRAWFORD
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15 CHANGE OF PLEA PROCEEDING
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21 BEFORE: The Hon. Vanzetta Penn McPherson

22 HEARD AT: Montgomery, Alabama

23 HEARD ON: March 15, 2004

24 APPEARANCES: Susan Redmond, Esq.

25 Christine Freeman, Esq.

1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE
2 THE HON. VANZETTA PENN McPHERSON ON MARCH 15, 2004 AT
3 THE UNITED STATES COURTHOUSE IN MONTGOMERY, ALABAMA:

4 THE COURT: United States of America vs.
5 David Jerome Crawford, case number 03-220-E.

6 Mr. Crawford appears in court with his attorney,
7 Miss Christine Freeman, and representing the
8 Government is Miss Susan Redmond.

9 Mr. Crawford, please approach.

10 Please swear the defendant.

11 (Whereupon, the defendant was duly sworn by
12 the courtroom deputy clerk.)

13 THE COURT: Please state your full name.

14 A David Jerome Crawford.

15 THE COURT: How old are you?

16 A Forty-seven.

17 THE COURT: How far did you go in school?

18 A Twelve, fourteen years.

19 THE COURT: Do you have a high school
20 diploma?

21 A G. E. D.

22 THE COURT: Have you ever been treated for a
23 mental illness or addiction to narcotic drugs?

24 A Yes, ma'am.

25 THE COURT: When was the last time you were

1 treated?

2 A 1993.

3 THE COURT: Have you been in a program for
4 drug or alcohol abuse since that time?

5 A No, ma'am.

6 THE COURT: Are you presently under the
7 influence of any drugs or alcohol not prescribed?

8 A No, ma'am.

9 THE COURT: Have you reviewed with your
10 lawyer, Ms. Freeman, a copy of the indictment in this
11 case?

12 A Yes, ma'am.

13 THE COURT: Do you understand the charge
14 against you?

15 A Yes, ma'am.

16 THE COURT: Do you also understand the
17 maximum penalty that can be imposed against you if you
18 are found guilty?

19 A Yes, ma'am.

20 THE COURT: Are you satisfied with the
21 counsel, representation and advice given to you in
22 this case by Ms. Freeman?

23 A Yes, ma'am.

24 THE COURT: Is your willingness to plead
25 guilty the result of conversations that you and

1 Ms. Freeman have had?

2 A Yes.

3 THE COURT: Do you understand the question?

4 A Yes, ma'am.

5 THE COURT: Is your decision to plead guilty
6 one that comes after you and Ms. Freeman have had
7 certain conversations and discussions?

8 A Yes, ma'am.

9 THE COURT: And are you aware that
10 Ms. Freeman has also had conversations or discussions
11 with Ms. Redmond, the United States' Attorney?

12 A Yes, ma'am.

13 THE COURT: The Court understands that there
14 is no written plea agreement in this case, is that
15 correct?

16 MS. FREEMAN: That is correct, Your Honor.

17 MS. REDMOND: That is correct, Your Honor.

18 THE COURT: Is there an agreement between
19 the defendant and the Government?

20 MS. FREEMAN: There is.

21 MS. REDMOND: There is.

22 THE COURT: Ms. Freeman, would you state,
23 please, the conditions and terms of that agreement.

24 MS. FREEMAN: Yes, Your Honor. This plea
25 agreement is being entered pursuant to both 11(a)(2)

1 and 11(c)(1)(b) of the Federal Rules of Criminal
2 Procedure. 11(c)(1)(b) means that the Government will
3 be making a recommendation, and Mr. Crawford is not
4 waiving his right to appeal or to bring a
5 postconviction relief action should he decide that to
6 be necessary in the future.

7 11(a)(2) references the fact that this is
8 the a conditional plea preserving the right to
9 preserve the District Court's ruling on the
10 suppression issue, which was previously heard before
11 this Court. I will enter, Your Honor, a notice, a
12 written notice, this week indicating that as well,
13 that that is with the Government's agreement. Should
14 the appellate court reverse the District Court's
15 ruling on the motion to suppress, Mr. Crawford would
16 have the right, and would exercise the right, to set
17 aside his guilty plea.

18 At the time of sentencing, Your Honor, the
19 Government agrees that Mr. Crawford is entitled to two
20 points for acceptance of responsibility, and that a
21 third point may be sought at the Government's
22 discretion. The Government will recommend a sentence
23 at the low end of the guidelines applicable, and there
24 may be a motion for a downward departure pursuant to
25 18 U. S. Code 3553 and United States sentencing

1 guideline provision 2(k)(1).1 relating to substantial
2 assistance provided by Mr. Crawford to the United
3 States.

4 THE COURT: Is there some reason why this is
5 not in writing?

6 MS. FREEMAN: Yes, Your Honor. We've
7 actually had some difficulty communicating.

8 THE COURT: All right.

9 MS. FREEMAN: Your Honor, I would also state
10 when Miss Redmond and I have discussed the terms of
11 this agreement, I had told her that I would be seeking
12 a motion to continue this case. While I did not
13 anticipate going to trial, I wanted to have additional
14 time to investigate sentencing issues. Because of
15 that, she also, and with my agreement, I did not
16 present any written proposal to me. I did not seek
17 one, and I decided that we would be ready to go ahead
18 with the plea agreement, thus neither of us has had
19 time to exchange language in writing.

20 THE COURT: All right. I want to make sure
21 that I understand the basic terms of the agreement.
22 First of all, it's being entered to 11(b)(1)(b) and
23 11(a)(2). Mr. Crawford -- well, it has 11(c)(1)(c)
24 implications as well, if there is a reversal.

25 MS. FREEMAN: Yes, Your Honor. My

1 understanding is 11(a)(2) permits Mr. Crawford to
2 request withdrawal of his guilty plea if the Court
3 reverses -- if the appellate court were to reverse.
4 That's within the conditions of 11(a)(2).

5 THE COURT: All right. As a practical
6 matter, let's see if we can review what is in fact
7 happening.

8 Has the district judge entered an order on
9 the motion to suppress?

10 MS. FREEMAN: He has, Your Honor. He upheld
11 the Court's recommendations, and that order was
12 entered on March 5th.

13 THE COURT: All right. Well as I recall,
14 that was a motion which granted in part and denied in
15 part the motion to suppress.

16 MS. FREEMAN: He did, and he upheld exactly
17 as the Court had ruled. It is my belief and
18 assumption that if the Eleventh Circuit, whatever
19 ruling they made on the statements issue, the critical
20 fact for the Government's proof of this matter was the
21 first part of the issue, which is whether or not these
22 actual discovery of the weapon would be suppressed.

23 If that would be suppressed, then we believe
24 there would be sufficient -- the Government would have
25 a problem producing sufficient evidence to support a

1 conviction, and we would be allowed to set aside our
2 plea. The District Court's present ruling is that the
3 discovery of the weapon was not to be suppressed, but
4 his statements were to be suppressed.

5 THE COURT: Right. And has the defendant
6 already filed his appeal?

7 MS. FREEMAN: No, Your Honor, because this
8 would not be an appeal that we must file
9 interlocutory, it can only be filed after a final
10 judgment is entered in District Court.

11 THE COURT: All right. Mr. Crawford, your
12 lawyer has just recited for me the terms and
13 conditions of the agreement that you have with the
14 Government. Do you understand that the agreement you
15 have with the Government will be communicated to the
16 District Court in the form of a recommendation?

17 A Yes, ma'am.

18 THE COURT: For sentencing purposes, the
19 Government has agreed to represent -- to recommend
20 that you be sentenced at the low end of your guideline
21 range?

22 MS. REDMOND: Yes, ma'am.

23 THE COURT: What is the low end?

24 MS. FREEMAN: Your Honor, there was not a P.
25 O. C. done in this case. It's my belief that the

1 guideline range that I have discussed with
2 Mr. Crawford would be possibly as low as seventy-seven
3 to ninety-six months. But there are several
4 variables, Your Honor, and so there is no specific
5 agreement between us that it would be seventy-seven
6 months.

7 That's the range that I have discussed with
8 Mr. Crawford. There are several variables on that. I
9 don't believe there would be any lower range.

10 THE COURT: All right. Seventy-seven to --

11 MS. FREEMAN: Ninety-six months.

12 THE COURT: Ninety-six. All right.

13 Mr. Crawford, do you understand that the low
14 end of the guidelines for purposes of your sentencing,
15 or the range, is a little over six years to eight
16 years --

17 A Yes, ma'am.

18 THE COURT: -- in prison?

19 A Yes, ma'am.

20 THE COURT: Do you also understand that this
21 agreement permits, but does not require the Government
22 to file an additional motion for a downward departure,
23 thus lowering your sentence even more than the
24 seventy-seven months if that turns out to be the low
25 end of the guidelines?

1 A Yes, ma'am.

2 THE COURT: Do you understand that if you
3 went to prison after being sentenced in this case, you
4 would not be released on parole because parole has
5 been abolished?

6 A Yes, ma'am.

7 THE COURT: Do you understand that if you
8 are sentenced in this case, you would be allowed to
9 withdraw your plea if you appeal the judge's finding
10 on the suppression motion and the Eleventh Circuit
11 reverses that finding?

12 A Yes, ma'am.

13 THE COURT: Do you understand that the Court
14 is under no obligation to accept the recommendation in
15 this case?

16 A Yes, ma'am.

17 THE COURT: Now let's be clear on this,
18 Ms. Freeman, so that we will know. What is the result
19 under the agreement if Mr. Crawford appeals the
20 Court's ruling on the suppression motion, the Eleventh
21 Circuit affirms and the Court sentences him to a
22 higher range than contemplated by the agreement?

23 MS. FREEMAN: The agreement does not
24 contemplate that he would have an automatic right to
25 withdraw his plea.

1 THE COURT: Do you understand that,
2 Mr. Crawford?

3 A Yes, ma'am.

4 THE COURT: All right. And again, just to
5 make sure you understand, that the Court is not bound
6 to follow the recommendation in the agreement?

7 A Yes, ma'am.

8 THE COURT: Has anyone, Mr. Crawford, made
9 any promises to you as to what might happen to you if
10 you plead guilty?

11 A No, ma'am.

12 THE COURT: Has anyone threatened you or
13 said or done anything to coerce you into pleading
14 guilty?

15 A No, ma'am.

16 THE COURT: Are you pleading guilty of your
17 own free will?

18 A Yes, ma'am.

19 THE COURT: Do you understand that if you
20 plead guilty and it's accepted by this Court, that the
21 adjudication of guilt may deprive you of the right to
22 vote, the right to hold public office, the right to
23 serve on a jury and the right to possess a firearm?

24 A Yes, ma'am.

25 THE COURT: Do you understand that if you

1 are convicted of this offense, that it will, from that
2 point forward, be illegal for you to possess a
3 firearm, whether you use it or not?

4 A Yes, ma'am.

5 THE COURT: Do you understand that if you go
6 to prison, you will not be released on parole?

7 A Yes, ma'am.

8 THE COURT: Do you understand that if you
9 get out of prison and go on supervised release and
10 violate the terms of your supervised release, you can
11 be returned to prison?

12 A Yes, ma'am.

13 THE COURT: Do you understand that the
14 probation office will prepare a presentence
15 investigation report so that the judge can consider
16 your background, your criminal history, your
17 educational and employment background and your
18 financial status?

19 A Yes, ma'am.

20 THE COURT: And that you will be expected to
21 cooperate with the probation officer by providing
22 information and answering questions?

23 A Yes, ma'am.

24 THE COURT: Do you understand that once the
25 report is prepared, you will have an opportunity to

1 object to the report before court, and again during
2 the sentencing hearing?

3 A Yes, ma'am.

4 THE COURT: Do you understand, Mr. Crawford,
5 that you have a continuing right to plead not guilty
6 in this case?

7 A Yes, ma'am.

8 THE COURT: That no one can force you to
9 plead guilty?

10 A Yes, ma'am.

11 THE COURT: That you are presumed innocent
12 of the charge until the Government proves your guilt
13 beyond a reasonable doubt?

14 A Yes, ma'am.

15 THE COURT: Do you understand that by
16 entering a plea of guilty you are waiving a trial?

17 A Yes, ma'am.

18 THE COURT: Do you understand that at a
19 trial you would have the following Constitutional
20 rights: The right to the assistance of your lawyer?

21 A Yes, ma'am.

22 THE COURT: The right to see and hear all of
23 the witnesses against you and have them
24 cross-examined?

25 A Yes, ma'am.

1 THE COURT: The right to testify on your own
2 behalf, or not testify, without having that used
3 against you?

4 A Yes, ma'am.

5 THE COURT: And the right to the issuance of
6 subpoenas to compel witnesses to come to court and
7 testify for you?

8 A Yes, ma'am.

9 THE COURT: Do you understand that once you
10 enter your plea of guilty, if it is accepted by this
11 Court you will waive all of those rights, including
12 your right to a jury trial?

13 A Yes, ma'am.

14 THE COURT: Having stated to the Court that
15 you understand the charge against you, the maximum
16 penalty, your Constitutional rights and the terms of
17 your agreement with the Government, tell the Court how
18 you plead.

19 A Guilty.

20 THE COURT: What did you do? When, and
21 where?

22 A Possessed a firearm.

23 THE COURT: When?

24 A July.

25 THE COURT: On or about 27 June 2003?

1 A Yes, ma'am.

2 THE COURT: Was it in Auburn, Alabama?

3 A Auburn, Alabama, yes.

4 THE COURT: At the time you possessed the
5 firearm in June 2003, had you before then been
6 convicted of a felony?

7 A Yes, ma'am.

8 THE COURT: In the state of Alabama?

9 A Yes, ma'am.

10 THE COURT: Which felony was it? What crime
11 was it?

12 A Assault second. And what's the other one?

13 THE COURT: Unlawful distribution of a
14 controlled substance and assault second?

15 A Yes, ma'am.

16 THE COURT: It also says in the indictment
17 that you had been convicted of manslaughter in Lee
18 County Circuit Court, is that correct?

19 MS. FREEMAN: Your Honor, he concedes that
20 he has at least one prior felony conviction, and that
21 he is therefore guilty of a violation of 18 U. S. Code
22 922(g)(1). I am not certain that we will concede each
23 of the felonies named in count one, but he has stated
24 that he was convicted of assault second degree in the
25 Circuit Court and that qualifies him for a conviction

1 under this act.

2 THE COURT: It does.

3 And is there a stipulation between the
4 parties that the gun traveled in interstate commerce?

5 MS. FREEMAN: Yes, Your Honor.

6 MS. REDMOND: Yes, Your Honor.

7 THE COURT: Then satisfied, Ms. Freeman?

8 MS. FREEMAN: Yes, Your Honor.

9 THE COURT: And, Miss Redmond?

10 MS. REDMOND: Yes, ma'am.

11 THE COURT: It is the finding of the Court
12 in the case of United States of America vs. David
13 Jerome Crawford that the defendant is fully competent
14 and capable of entering an informed plea, that the
15 defendant is aware of the nature of the charges and
16 the consequences of the plea, and that the plea of
17 guilty is a knowing and voluntary plea supported by an
18 independent basis in fact containing each of the
19 essential elements of the offense. The Court will,
20 therefore, recommend that the plea be accepted and
21 that the defendant be adjudged guilty of the offense.

22 Mr. Crawford has, since the issuance of his
23 bond, been on release, and on Friday, 12 March 2004
24 the probation officer filed a petition to revoke his
25 pretrial release. Ms. Freeman, do you have a copy of

1 that petition?

2 MS. FREEMAN: No, Your Honor, I was unaware
3 of that fact until just this moment.

4 THE COURT: Mr. Dillon? MR. DILLON: Yes,
5 ma'am?

6 THE COURT: One of the allegations in the
7 petition we now know is that these are reversible, and
8 that is the allegation that the defendant's
9 whereabouts are unknown. However, the defendant is
10 also alleged to have failed to report to his
11 supervising officer on a monthly basis from November
12 2003 through February 2004; second, that the defendant
13 is not residing at the address that he gave to the
14 Court or the probation officer; and, third, that
15 because of his failure to reside at that address he is
16 violating the curfew as set forth by the Court.

17 And finally, Mr. Crawford, though this is
18 not specifically in the petition, by making your
19 whereabouts unknown to the probation officer for that
20 period, you made it impossible for the officer to
21 supervise you.

22 The Court is going to set this matter for a
23 hearing on 30 March at nine a.m. in this courtroom.
24 Mr. Dillon.

25 MR. DILLON: Yes, ma'am?

1 THE COURT: You are that officer, is that
2 correct?

3 MR. DILLON: That's correct.

4 THE COURT: All right. The Court had
5 earlier signed an order for the issuance of a warrant.
6 The Court finds that that is not now necessary now
7 that the defendant is here.

8 But, Mr. Crawford, when you return on the
9 30th, you will be required to answer to these charges.

10 A Yes, ma'am.

11 THE COURT: And the Court directs that a
12 summons be issued for the defendant's appearance on 30
13 March 2004 at nine a.m.

14 Do we have a sentencing date, Ms. Keith?

15 COURTROOM DEPUTY CLERK: They're tentatively
16 set for the 15th of June.

17 THE COURT: June 15th, 2004 before Judge
18 Albritton.

19 Thank you.

20 MS. FREEMAN: Thank you, Your Honor.

21 (Whereupon, the proceedings were concluded.)
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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter as prepared by me to the best of my ability.

I further certify that I am not related to any of the parties hereto, nor their counsel, and I have no interest in the outcome of said cause.

Dated this 29th day of July 2004.

MITCHELL P. REISNER, CM, CRR,
Official US Dist. Court Reporter
Registered Professional Reporter
Certified Real-Time Reporter